IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Jaswant Singh
Vs.
State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.1371/2003 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 15th December, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.B.D. Purohit, Advocate for the petitioner.
Mr.Rameshwar Dave, Dy. Govt. Advocate for the State.
Mr.R.N. Upadhyay, Advocate for the respondent No.5.

BY THE COURT

Under challenge in this writ petition is award dated 08th February, 2002 passed by the learned labour court whereby it

has answered reference on the question of retrenchment of the petitioner workman. The appropriate Government vide its notification dated 06th July, 1995 made reference to the learned labour court on the question whether the retrenchment of the petitioner was legal and valid and if not, what relief he was entitled to. Learned labour court held that workman was retrenched after making compliance of Section 25-F of the Industrial Disputes Act.

I have heard learned counsel for the parties and perused the records.

Learned counsel for the petitioner argued that the petitioner was appointed on the post of Mate on 01st August, 1984. The seniority list of the said post was published by the respondents on 12th November, 1987 showing the name of the petitioner at serial No.34 whereas the name of respondent No.5 Basanti Lal was shown at serial No.39 in the same seniority list. The respondents have although terminated the service of the petitioner on 31st August, 1989 but they

continued the respondent No.5 in service in violation of Section 25-G of the Act.

On the other hand, learned counsel for the respondents argued that although the name of the petitioner in the seniority list referred to above has been shown at serial No.34 and the name of the respondent No.5 has been shown at serial No.39 but besides the fact that such seniority list was only tentative, the date of initial appointment of the petitioner therein was shown as 01st August, 1984 as against the date of initial appointment of respondent No.5 as 01st September, 1981. According to the respondents, the date of initial appointment of the workman would be a determining factor to arrive at the conclusion as to who amongst them would be senior for the purpose of compliance of Section 25-G.

Learned counsel for the petitioner thereupon submitted in rejoinder that the date of initial appointment on the lower post would not be relevant because seniority in terms of Section 25-G is required to be prepared in a particular category of

appointment. When the petitioner came to be appointed as Mate earlier than respondent No.5, the respondents cannot be allowed to contend that the provisions of Section 25-G stood complied with. Learned counsel for the petitioner also in this connection invited attention of the Court to para 49 of the standing order for work-charged establishment which provides that seniority in a particular category shall be counted from the date of continuous service in that category. In order to buttress his arguments on his proposition of law he relied upon the judgment of this Court in Oriental Bank of Commerce vs. The Presiding Officer, Central Govt. Ind. Tribunal & Anr., reported in 1991 (1) WLC (Raj.) 464 and in Sawai Madhopur Through its Chairman & Anr. vs. The Presiding Officer, Central Industrial Tribunal, Jaipur & 2 Anr., reported in 2002 (1) WLC (Raj.) 296.

On the other hand learned counsel for the respondents argued that there was no violation of Section 25-G of the Act inasmuch as respondent No.5 having been appointed much earlier than the petitioner cannot be considered as junior to the petitioner.

I have considered the arguments advanced by learned counsel for the parties.

A perusal of the award of learned labour court shows that it has recorded the finding as to compliance of Section 25-F of the Industrial Disputes Act. Learned counsel for the petitioner has not posed any challenge to this finding recorded by the learned labour court. He has however stressed largely on the question of compliance of Section 25-G. According to him, appointment of the petitioner as Mate was made earlier than the appointment of respondent No.5 on that post and this would form basis for examination whether or not compliance of Section 25-G was made.

On perusal of the award however I do not find this argument acceptable. Learned labour court has noted the fact that the date of initial appointment of the petitioner was 01st August, 1984 and the respondent No.5 was appointed initially on 01st September, 1981 although his date of appointment on the post of Mate is indicated as 01st October, 1985. The learned

labour court has held that merely because the respondent No.5 was promoted later than the petitioner, this would not make any difference to the factum of his having been appointed earlier than the petitioner.

The seniority list which the learned counsel for the petitioner has relied upon is merely a tentative seniority list and therefore it cannot be accepted that this was a final seniority list and therefore it cannot be held that this seniority list ultimately become final. Besides the respondents have retrenched the petitioner by making compliance of Section 25-F. The petitioner also could not prove whether after his retrenchment any new person was engaged. Moreover this seniority list was issued on 01st March, 1993 when the petitioner had already been retrenched on 31st August, 1989 and therefore it clearly indicates that seniority list does not reflect the correct position.

In my considered view, the award passed by the learned labour court does not suffer from any error apparent on the

face of record so as to warrant any interference by this Court.

The writ petition is accordingly dismissed with no order as to costs.

[MOHAMMAD RAFIQ],J.

AKC.